

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

UNITE HERE! LOCAL 5

and

Case 20–CB–171212

AQUA-ASTON HOSPITALITY, LLC

Jeff F. Beerman, Esq.,

for the General Counsel.

David L. Barber, Esq. (Davis, Cowell & Bowe, LLP),¹

for the Respondent Union.

Christine K.D. Belcaid, Esq. (Torkildson, Katz, Moore, Hetherington & Harris),

for the Charging Party Employer.

DECISION

JEFFREY D. WEDEKIND, Administrative Law Judge. The complaint in this case alleges that the Respondent Union, UNITE HERE! Local 5, unlawfully picketed at the Aston Waikiki Beach Hotel in Honolulu between mid-December 2015 and late January 2016 in a manner that deliberately and repeatedly impeded vehicles from exiting the hotel’s front semi-circular driveway.²

It is the second such complaint issued against the Union. The first (Case 20–CB–163657) alleged similar unlawful picketing at the hotel in August, October, and early December 2015. On January 18, 2017, Administrative Law Judge Lisa D. Thompson issued a decision in that case finding that the picketing violated Section 8(b)(1)(A) of the National Labor Relations Act as alleged. *Unite HERE! Local 5 (Waikiki Beach Hotel)*, JD(SF)–50–16, 2017 WL 219678.

As discussed below, the same conclusion is warranted regarding the picketing at issue here.

¹ Davis, Cowell & Bowe, LLP recently changed its name to McCracken, Stemerman & Holsberry, LLP.

² The Regional Director issued the complaint on August 31, 2016, and the Union filed its answer a few weeks later on September 14. The hearing was subsequently held on December 12, and the General Counsel and the Respondent Union filed their posthearing briefs on January 13, 2017. The Board’s commerce jurisdiction is undisputed and established by the uncontested facts and findings by Administrative Law Judge Mara-Louise Anzalone in *Aston Waikiki Beach Hotel*, 20–CA–154749, JD(SF)–24–16, 2016 WL 3383760 (May 31, 2016), of which I take judicial notice.

I. FACTUAL BACKGROUND

As in the prior case, the relevant facts are generally undisputed and well documented both by hotel security reports and notes (Jt. Exh. 1E, pp. 24–45, GC Exhs. 3, 5, 6), and by video taken by the Union itself (R. Exh. 1). On each of the subject days (Dec. 15 and Jan. 9, 16, and 29), the Union set up a picket line on the public sidewalk in front of the hotel for about an hour in the early morning or late afternoon.³ The number of pickets varied, from about 10 to 60 at a time. But, regardless of the number, the pickets marched back and forth on the sidewalk in a narrow oblong circle that extended across the exit of the hotel’s semi-circular driveway. They displayed picket signs (stating “No Respect” and “No Union Contract”), chanted or sang prounion songs (sometimes with bullhorns), and otherwise made noise (such as by shaking metal cans with coins in them or banging pots or pans).⁴

A picket captain employed and trained by the Union directed the pickets when to start and stop marching. If a vehicle approached the exit, the captain stood in the middle of the driveway and signaled the driver to stop by extending his arm with his palm facing outward. The captain then waited there for about 1–2 minutes for the picket line to make one to two full rotations (depending on the length of the picket line) before calling for the line to stop and break so the vehicle could drive out.⁵

Although the picket captain had complete discretion, and could have stopped the line immediately, he made the vehicles wait in order to draw more attention to the picketing. See Jt. Exh. 1A, p. 327 (the purpose of keeping vehicles waiting “is to be a little annoying to get a point across, to get your message out”); and 427 (the captain keeps the vehicles waiting “because we get more attention when we’re in front of those cars for a little bit longer. It draws more attention to the action.”). Even if a driver lost patience or expressed an urgent need to exit and honked and/or drove the vehicle up close to the captain’s legs, he would not move aside. See R. Exh. 1, Dec. 15, 6:51 am, at 59 seconds; and Jan. 29, 4:01 pm, at 1 minute and 20 seconds. Nor would he indicate how long he was going to make the driver wait.

The picket captain followed this same procedure even if the vehicle was being driven by a uniformed hotel valet rather than a guest or taxi driver. The hotel valet/bell stand is on the exit side of the driveway near the top of the semi-circle. The valets regularly drive the guest vehicles

³ The picketing occurred in the early morning (about 6:30 to 7:30 am) on December 15 and January 9 and 16, and in the late afternoon (about 3:30 to 4:30 pm) on January 29. Although the record includes evidence of picketing on other dates, the complaint allegations are limited to the four dates in December 2015 and January 2016 (Tr. 19–20).

⁴ The Union is not currently the bargaining representative of the hotel employees.

⁵ There were a few exceptions. In some instances, the picket captain stopped and broke the line in less than a minute or after more than 2 minutes. See, e.g., R. Exhs. 1, 2, and Jt. Exh. 1E, p. 45 (Dec. 15). And, if the line was unusually small, the captain might let it fully rotate three times before calling for it to stop and break. See R. Exh. 1, Dec. 15, 6:51 am, beginning at 30 seconds, when the vehicle approached the exit, and ending at 2 minutes and 10 seconds, when the vehicle drove out (showing that the captain allowed the line, which included only 8 marching pickets, to rotate three and a half times before directing it to stop and break).

from there out the exit to the hotel garage. (Guests are not allowed to park their vehicles in the garage themselves.) And the hotel security reports and notes confirm that, on January 29, when numerous vehicles were delayed attempting to exit, at least seven were driven by a valet (Jt. Exh. 1E, pp. 24–27; GC Exh. 3; Tr. 33–45).

There is insufficient evidence that any vehicles driven by hotel valets were delayed exiting on the other three days at issue. On December 15, numerous vehicles were delayed, but there is no evidence that they were driven by a valet (Jt. Exh. 1E, pp. 44–45; R. Exh. 1). As for January 9, only a taxi was delayed.⁶ Although two other vehicles drove out the entrance on the opposite end of the driveway, the drivers were not identified (Jt. Exh. 1E, pp. 38–39; GC Exh. 5; R. Exhs. 1, 2; Tr. 58). The same is true on January 16; a taxi and another vehicle were delayed at the exit, and numerous vehicles drove out the entrance instead, but there is no evidence that any of them were driven by a valet (Jt. Exh. 1E, pp. 34–35; GC Exh. 6; R. Exhs. 1, 2; Tr. 59).⁷ However, it is undisputed that the valet and bell employees would have been able to observe the foregoing incidents from the valet/bell stand.

II. LEGAL ANALYSIS

Under Section 8(b)(1)(A) of the Act, it is unlawful for a union to picket an employer’s premises in a manner that intentionally blocks employees’ ingress or egress. Such picketing is unlawful regardless of whether the employees are attempting to enter or exit at the beginning or end of the workday, or are attempting to perform their assigned tasks during the workday. See *Electrical Workers Local 98 (Tri-M Group)*, 350 NLRB 1104, 1107–1108 (2007) (finding the picketing unlawful because it temporarily blocked an employee from driving a backhoe out onto the street to drop his load into a dumpster).⁸ It is also generally unlawful regardless of whether it blocks employees’ ingress or egress for a short or a long period of time, and/or whether it is accompanied by other violent or threatening conduct. See *Shopmen’s Local 455 (Stokvis Multi-Ton Corp.)*, 243 NLRB 340, 348 (1979) (finding the picketing unlawful even though it blocked a truck that was attempting to back into the employer’s loading dock for only about 5 minutes); and *Metal Polishers Local 67 (Alco-Cad Nickel Plating Corp.)*, 200 NLRB 335, 336, 339–340 (1972) (finding the picketing unlawful even though it blocked a vehicle that was transporting

⁶ Contrary to Aqua-Aston’s brief (p. 8), the videotape for January 9 does not show the type of vehicle being delayed at the exit. Only the glow from the headlights is visible. Thus, it is not clear that another vehicle besides the taxi noted by the security officer was delayed at the exit that morning.

⁷ Contrary to Aqua-Aston’s brief (pp. 8–9), the evidence does not show that the vehicles drove out the entrance on January 9 and 16 because they had been “completely prevented” from departing through the exit. The hotel security reports state only that the vehicles departed via the front entrance “due to protest[] activity at the front exit” (Jt. Exh. 1E, pp. 34–35, 40). Further, it is uncontroverted that the union picket captain always let vehicles pass through the line eventually (Tr. 86).

⁸ See also *Electrical Workers Local 98 (MCF Services)*, 342 NLRB 740, 752 (2004), *enfd.* 251 Fed. Appx. 101 (3d Cir. 2007) (union agent used his personal vehicle to temporarily block an employee from driving a forklift to a dumpster).

labor pool employees for only 3–5 minutes and was not accompanied by other physical violence), and cases cited there.

Union picket-line misconduct directed toward nonemployees likewise violates Section 8(b)(1)(A) of the Act if it occurs in the presence of employees. See *Local Joint Executive Board of Las Vegas (Casino Royale)*, 323 NLRB 148, 159 (1997), and cases cited there. Thus, even if picketing does not block employees’ ingress or egress, it is unlawful if it blocks other individuals’ ingress or egress in the presence of employees. See, e.g., *Shopmen’s Local 455*, 243 NLRB at 346 (finding the picketing unlawful because it blocked a truck driven by a manager from departing the loading dock for several minutes until the police intervened, and employees would have observed or heard about the incident).

As indicated by the General Counsel and Aqua-Aston, the subject picketing here was clearly unlawful under the foregoing principles. As fully discussed above, on January 29 the pickets, at the direction of the union picket captain, deliberately, repeatedly, and persistently blocked numerous vehicles, including at least seven driven by hotel valet employees, from exiting for 1–2 minutes at a time. The pickets engaged in similar conduct on December 15 and January 9 and 16, likewise at the direction of the picket captain, temporarily blocking numerous vehicles in the presence or view of the hotel valet and bell employees.⁹

Contrary to the Union’s contention, such calculated and recurring conduct cannot reasonably be excused as minor or de minimis. Nor can it be equated with the relatively few “haphazard” and/or isolated attempts to temporarily block ingress or egress that the Board found did not rise to the level of an 8(b)(1)(A) violation in *Service Employees Local 50 (Evergreen Nursing Home)*, 198 NLRB 10, 12 (1972), and *Hendricks-Miller Typographic Co.*, 240 NLRB 1082, 1099 (1979).

CONCLUSIONS OF LAW

By picketing the Aston Waikiki Beach Hotel on December 15, 2015 and January 9, 16, and 29, 2016 in a manner that deliberately and repeatedly impeded hotel valets or others in the presence of hotel valet and bell employees from exiting the hotel for approximately 1–2 minutes at a time, UNITE HERE! Local 5 committed unfair labor practices in violation of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

REMEDY

The appropriate remedy for the violations found is an order requiring UNITE HERE! Local 5 to cease and desist from its unlawful conduct and to take certain affirmative action. The latter properly includes a requirement that the Union post a notice to employees and members, and to provide signed copies of that notice for voluntary posting by the hotel as well. Further, given that many of the hotel employees apparently speak the Philippine dialects Ilocano or

⁹ As indicated above, it is undisputed, and ALJ Thompson found, that the Union previously engaged in such conduct in August, October, and early December 2015 as well.

Tagalog,¹⁰ rather than English, as their primary language, the notices must be posted in all three languages. See, e.g., *Teamsters Local 455 (Cargill Meat Solutions Corp.)*, 364 NLRB No. 127 (2016).

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ORDER¹¹

The Respondent, UNITE HERE! Local 5, Honolulu, Hawaii, its officers, agents, and representatives, shall

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1. Cease and desist from

(a) Blocking or impeding Aston Waikiki Beach Hotel employees or others in the presence of hotel employees from entering or exiting the hotel property.

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(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

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(a) Within 14 days after service by the Region, post at its offices in Honolulu, Hawaii, copies of the attached notice marked “Appendix” in English, Ilocano, and Tagalog.¹² Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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(b) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notice in all three languages for physical and/or electronic posting by Aqua-Aston Hospitality, LLC, if willing, at all places or in the same manner as notices to the hotel employees are customarily posted.

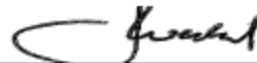
¹⁰ See ALJ Anzalone’s decision in *Aston Waikiki Beach Hotel*, supra. I also take judicial notice that some of the hotel employees testified through an Ilocano-language interpreter at a recent hearing in another case involving the same parties, *Aston Waikiki Beach Hotel*, 20–CA–167132.

¹¹ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5 Dated, Washington, D.C., January 27, 2017



Jeffrey D. Wedekind
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT block or impede Aston Waikiki Beach Hotel employees or others in the presence of hotel employees from entering or exiting the hotel property.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights listed above.

UNITE HERE! LOCAL 5

(Union)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

300 Ala Moana Boulevard, Room 7-245, Honolulu, HI 96850-4980
(808) 541-2814, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/20-CB-171212 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE
DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY
OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE
WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S
COMPLIANCE OFFICER, (808) 541-2815.